STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED June 28, 2005
v	No. 252641 Wayne Circuit Court
DENNIS JEROME HOUSE, Defendant-Appellee.	LC No. 03-007317-01

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant was charged with carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Following an evidentiary hearing, the trial court granted defendant's motion to suppress the evidence of the gun, and then subsequently dismissed the charges without prejudice. The prosecution now appeals as of right, asserting that the trial court erred in determining that the police lacked reasonable suspicion to stop defendant. We reverse and remand to the trial court for further proceedings. This case is being decided without oral argument pursuant to MCR 7.214(E).

The police received a dispatch of a report of shots being fired into a home and that one of the perpetrators was wearing all black clothing and riding a blue bicycle toward Mack Avenue. Five minutes after receiving the dispatch, police officers stopped defendant riding a bicycle near the area. He was wearing a gray jacket, blue pants, and a black hat. He cooperated fully and made no furtive gestures. The police patted defendant down and discovered a gun in his pocket.

The trial court found that the clothing worn by defendant was not "even close" to the clothing description reported by an anonymous tipster. The trial court went on to state there was no predicative information to test the tipster's reliability or credibility and, even though defendant was only a few houses away from the home where the shots were reportedly fired, the perpetrator would have had ample time to leave the area. Finally, the trial court stated it was also basing its decision to dismiss the charges on the testimony of the officers which demonstrated that defendant fully cooperated when approached by the police. It therefore concluded that the police lacked reasonable suspicion to stop defendant and granted his motion to suppress the evidence of the gun.

"This Court reviews a trial court's factual findings at a suppression hearing for clear error. But the '[a]pplication of constitutional standards by the trial court is not entitled to the same deference as factual findings.'" *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005) (citations omitted). This Court has stated that the issue "whether such suspicion was reasonable under the Fourth Amendment is a question of law that we review de novo." *People v Bloxson*, 205 Mich App 236, 245; 517 NW2d 563 (1994).

While the parties and the trial court focused almost exclusively on the issue of anonymous tips, we find such discussions unnecessary to reach a conclusion in this case. The questions presented in this appeal are two-fold: (1) whether the police officers involved had sufficient legal cause to conduct an investigatory stop under *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), and its progeny; and (2) whether the police officers possessed sufficient legal cause to conduct their pat-down of the defendant which revealed the existence of a weapon.

At the evidentiary hearing conducted in this matter, the arresting officer testified that he and his partner received a call to go to the area of Mack and St. Clair because there was a report of shots fired and the subject was riding a bicycle and heading toward Mack. The officer was told that the color of the bike was blue, but he could not remember whether there was any information regarding the color of the perpetrator's clothing.[1] He further testified that the gunfire was in front of a house on St. Claire, approximately four or five houses away from Mack.

Approximately five minutes after receiving the information from dispatch, the arresting officer testified that he encountered defendant at St. Clair and Mack, on a blue bicycle. Testimony at the evidentiary hearing indicated that the police officers activated their lights and stopped defendant. The arresting officer then had a conversation with defendant wherein he was asked if he had heard any shots, to which defendant replied that he had not, and was further asked by the officer whether he had a weapon on him to which defendant also responded in the negative. The officer then testified that they patted down the suspect for their own safety, thereby retrieving a loaded revolver in defendant's right front pocket.

The first question presented to us is whether the officers had a reasonably articulable suspicion that criminal activity was afoot. "Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). Our Supreme Court has stated that "the reasonable suspicion needed for such stops 'requires a showing considerably less than preponderance of the evidence.'" *People v Oliver*, 464 Mich 184, 202-203; 627 NW2d 297 (2001).

The officers were dispatched to an area where shots had been reported fired minutes earlier and told that one of the suspects was on a blue bicycle wearing black clothing, probably on Mack near St. Clair. Shortly after they arrived at the area, the officers observed defendant

[1] It was the testifying officer's partner who had written in the police report that the suspect was wearing all black clothing.

riding a blue bicycle and wearing a gray jacket, blue pants and a black hat. While the trial court stated that the clothing description was not "even close," we find that such a finding was clear error. The trial court focused on the clothing description, and ignored the fact that the color of the bicycle being ridden by defendant was the same as reported. Additionally, although the testimony is not patently clear on hues, we cannot state, as did the trial court, that gray and blue are not "even close" to black. Lastly, defendant did have on a black hat. The trial court also failed to recognize that defendant was stopped shortly after the report of gunfire and was in the area where the caller stated the shooter was heading. Given the totality of the circumstances, we hold that the arresting officers possessed reasonable suspicion under *Terry*, *supra* to effectuate an investigatory stop.

Having found that the officers possessed the legally requisite level of suspicion to effectuate a *Terry* stop we next turn to the issue of the pat-down for weapons.

It is axiomatic that an officer who executes a valid investigative stop is entitled to perform a limited pat-down search for weapons provided that the officer has a reasonable suspicion that the individual is armed and thus poses a threat to the officer's safety. *Champion*, *supra* at 99. As our Supreme Court observed, *Terry* "strictly limits the permissible scope of a pat down search to that reasonably designed to discover guns, knives, clubs, or other hidden instruments that could be used to assault an officer." *Id.* Indeed, for a pat-down search to pass constitutional muster, "[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [officer] in the circumstances would be warranted in the belief that [the officer's] safety or that of others was in danger." *People v Custer*, 465 Mich 319, 328; 630 NW2d 870 (2001). Under the totality of the circumstances, to demonstrate reasonable suspicion, the officer must have objective, particularized facts, along with rational inferences drawn therefrom, which "'reasonably warrant the intrusion.'" *Id.*, quoting *Terry*, *supra* 392 US at 21.

In this case the officers had a report of shots fired from a person riding a blue bicycle and wearing all black. Officers stopped a man in the area of the reported shots being fired on a blue bicycle wearing a gray jacket, blue pants and a black hat. Given that defendant was close to being an exact match of the description of the shooter and the close proximity between the time the report was received and the time defendant was stopped, we conclude that the officers had reasonable suspicion that the individual was armed and thus posed a threat to their safety. Additionally, the pat-down was limited to those areas where a weapon would likely be found.

We therefore hold that the trial court clearly erred in its factual finding that the information leading to the stop arose from an anonymous "tip," when, in fact, it was a call for assistance from someone stating that shots had been fired and therefore requesting police assistance. Because the trial court made this factual error, it thereafter engaged in a discussion regarding standards employed to determine the reliability of anonymous tips rather than focusing on whether the stop and pat-down were permissive under the facts and law of the case.[2] We

[2] Although both parties spent a considerable amount of effort on this issue, we find it irrelevant because the call to police was not an anonymous tip, but rather a call of shots fired. Therefore, we find *United States v Wheat*, 273 F3d 722 (CA 8, 2001), controlling.

further hold that the officers had reasonable suspicion to effectuate an investigatory stop and a limited pat-down to ensure their safety.

Accordingly, we remand the matter back to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello